

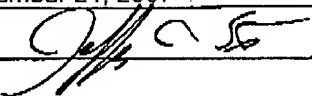
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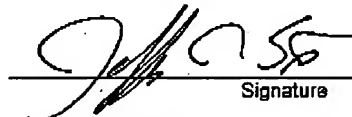
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2284
I hereby certify that this correspondence is being transmitted to the USPTO facsimile number 571-273-8300, according to 37 CFR 1.6(d) addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.6(a)] on <u>September 21, 2007</u> Signature  Typed or printed name <u>Jeffrey A. Steck</u>	Application Number 10/781,609	Filed February 18, 2004
	First Named Inventor Fami Weaver	
	Art Unit 2617	Examiner R. Peaches
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>40,184</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		



Jeffrey A. Steck

Typed or printed name

312 913-2115

Telephone number

September 21, 2007

Date

☒ *Total of 1 forms are submitted.

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REASONS FOR REVIEW OF FINAL OFFICE ACTIONRECEIVED
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The applicant respectfully requests review of the Final Office Action. First, in several instances, claim limitations added by the amendments filed in response to a non-final Office Action were not addressed in the Final Office Action, and the rejections of those claims will not be upheld on appeal. *See* 37 C.F.R. § 113(b) ("In making such final rejection, the examiner shall repeat or state all grounds of rejection ... clearly stating the reasons in support thereof.") Second, as to several of those claim limitations that were addressed, the prior art does not disclose those limitations as contended in the Final Office Action and thus, no *prima facie* case of obviousness has been established with respect to those claims.

1. Claims 1 and 28*a. The Final Office Action Does not Address all Claim Elements*

The applicant respectfully submits that the Final Office Action fails to establish a *prima facie* case of obviousness against independent claims 1 and 28, because it does not allege that any prior art teaches the step of "sending the electronic message to the message gateway only after determining that the expected delay is less than the threshold delay" (claim 1), or the operation of "send[ing] the electronic message over the network interface only if the expected delay is less than the threshold delay" (claim 28). These claimed features were added in the response filed on January 8, 2007. However, they were apparently overlooked in the preparation of the Final Office Action. In particular, the Final Office Action at pages 2-3 provides a bulleted list of prior art citations that

allegedly correspond to each subparagraph of claim 1 *except* for the final subparagraph, which recites the step at issue. Because this series of citations end with the word “and,” with no further citation, (see Final O.A., page 3), it appears that the examination of claims 1 and 28 is simply incomplete.

b. The Unexamined Claim Elements Are Absent from the Cited Art

As the applicant explained in the response filed January 8, 2007, neither the Chung Kam Chung nor the Jiang references disclose that an electronic message can be sent to a message gateway only *after* determining that the expected delay is sufficiently short. Because the Final Office Action does not allege that this feature is taught in the prior art, and because the prior art of record does not, in fact, disclose this feature, the applicant respectfully requests withdrawal of the rejections of claims 1 and 28 and of the claims dependent therefrom

2. Claim 23

a. The Final Office Action Does not Address all Claim Elements

With respect to independent claim 23, the Final Office Action fails to establish a *prima facie* case of obviousness. The First Office Action did not identify any basis for the rejection of claim 24, which depends from claim 23. The applicant subsequently amended claim 23 to incorporate the limitations of claim 24. The Final Office Action still identifies no prior art in which the limitations imported from claim 24 are found. Instead, the Final Office Action purports to reject claim 23 for the same grounds as the rejections of claims 1 and 28. However, these grounds of rejection, which relate to “a method for delivering

electronic messages,” simply do not correspond to the elements of claim 23, which recites a “delay manager.”

b. The Unexamined Claim Elements are Absent from the Cited Art

The applicant does not believe that the features imported from claim 24, such as the claimed “subscriber data storage,” are disclosed in the claimed combination in either Chung Kam Chung or Jiang. Accordingly, claim 23 and those that depend from it are believed to be patentable over the prior art of record.

3. Claim 14

a. The Final Office Action Does not Address all Claim Elements

The rejection of independent claim 14 likewise fails to establish a *prima facie* case of obviousness. In the response filed January 8, 2007, the applicant amended claim 14 by adding the underlined claim limitation quoted here:


sending the electronic message to the message gateway only after determining that the expected delay is less than the threshold delay

The Final Office Action, however, overlooks this added limitation and makes only the same rejection that was raised in the first Office Action. *Compare* Final O.A., page 6 (“sending the electronic message only after determining that the expected delay is less than a threshold. See column 7 lines 54-67”) with First O.A., page 7 (same). The added limitation clarifies that the message is not even sent to the message gateway unless the expected delay is sufficiently short, and the Final Office Action does not allege that this feature is taught anywhere in the prior art.

b. The Unexamined Claim Elements are Absent from the Cited Art

The prior art relied on does not teach the claimed feature of sending the electronic message *to the message gateway* only if it is determined that the expected delay is sufficiently short. To the contrary, the Final Office Action alleges that Chung Kam Chung teaches sending an electronic message *from* the message gateway. *See* Chung Kam Chung, Col. 7, lines 54-67 (relied on at Final O.A., page 6); *see also* Final O.A., page 4 (alleging that the MSC of Chung Kam Chung is a "message gateway").

Because the Final Office Action does not allege that this feature is taught in the prior art, and because the prior art of record does not, in fact, disclose this feature, the applicant respectfully requests withdrawal of the rejections of claim 14 and of the claims dependent therefrom.



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Date: September 21, 2007